# Written Statement
# Submitted to

# Charitable/Exempt Organizations Working Group
# of the
# U.S. House Committee on Ways and Means

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April 1, 2013

In furtherance of comprehensive tax reform, the U.S. House Committee on Ways and Means has afforded the charitable sector and its stakeholders an opportunity to share the importance of the charitable deduction and its direct and material impact on society. Through the voices and written stories of sector members and their beneficiaries, this group has shared how private wealth has leveraged or stood in the place of public funds to advance charitable organizations that serve a diverse and growing base of public need. These organizations include, but are not limited to, educational institutions, hospitals and health delivery organizations, public safety and disaster relief organizations, food banks and shelters, youth organizations and scientific and medical research institutions.

Comprehensive tax reform enables a full review of the U.S. Tax Code (the "Code") and provides a basis for removal of those practices that are ineffective or are no longer necessary; permits modification of existing practices to optimize outcomes; allows novel provisions to be added to the Code; and enables resolution of inequities within the Code to expand the success of proven practices. Through multiple types of charitable organizations, private wealth complements public funding to fuel the conduct and advancement of public human medical research. In contrast, public agriculture research neither benefits from the same level of public funding—public agricultural funding receives approximately 2% of public life science funding—nor does public agriculture research have like access to private wealth through commensurate types of charitable organizations. Reformation of the Code offers an opportunity to resolve this inequity. More specifically, through a minor modification of the Code, the charitable deduction may be used to support and advance life science research to benefit the United States and address production of food, feed and fiber for an exploding global population.

**Proposal.** Among other modifications to the Code made during this reform effort, it is proposed that Congress take the opportunity to create a new type of 501(c)(3) charitable organization, *agricultural research organizations,* to enable philanthropic giving to build U.S. agricultural research capacity in conjunction with the nation's agricultural universities.

While some might submit that the creation of a new type of 501(c)(3) is at odds with reform, it is in fact wholly consistent with the notion of taking a proven provision of the Code and expanding its applicability to a linked area of focus (e.g., life science research) and purpose (e.g., the health and well-being of a global population). Importantly, and critical to this conversation, this non-complicating modification can occur without reducing the base of potential taxpayers.

Agriculture productivity requires a national commitment to innovation that cannot be adequately met by federal appropriations. Accordingly, tax reform presents the opportunity to create a charitable vehicle to build public agricultural research capacity using private wealth to complement and leverage traditional public funding. This new tool, *agricultural research organizations,* will contribute new technologies and improve production efficiencies to enable the United States to continue to feed and clothe itself and provide a critical foundation for world food stability and security.

**A Proven Model.** In the mid-1950s, Congress created an institution-type, public charity directed to the continuous, active conduct of medical research. This then-new type of 501(c)(3) charitable organization, *medical research organizations* (MROs), was a pioneering effort by Congress. Congress afforded public charity status to a type of exempt organization that in many cases would have been labeled a "private foundation" based on the source of the exempt organization's funding (i.e., an individual or a family).

For MROs, Congress did not limit itself to conventional models or pre-existing exempt organizations; it crafted a truly novel solution. Congress created a charitable organization requiring a set of "positive" requirements for MROs to secure and keep their 501(c)(3) status. In contrast, "negative" requirements, which are commonly associated with private foundations, must be avoided for such organizations to secure and keep their exempt status.

The positive requirements imposed on MROs form a network of checks and balances to better ensure their contribution to society. The requirements for each MRO includes: (1) the continuous conduct of research; (2) a minimum expenditure requirement; and (3) work in conjunction with a non-profit hospital(s) or a government hospital(s). This last requirement was imposed because of the hospitals' common purpose of advancing human health with additional benefits deriving from the hospitals' infrastructure, research and/or mechanisms for delivering research outcomes.

Human health research has been a long-time matter of interest to the federal government, such research tracing back to the first research laboratory, established in 1887, in a predecessor agency to the National Institutes of Health.

Despite substantial government research investments in human health research (i.e., approximately $31 billion in 2012), MROs have provided a material contribution to this public field of research. Importantly, much of this contribution, estimated at hundreds of millions of dollars annually by fewer than 300 MROs, derives from private wealth. Examples of MROs include the Howard Hughes Medical Institute (Chevy Chase, Maryland), the Van Andel Research Institute (Grand Rapids, Michigan) and the Stowers Institute for Medical Research (Kansas City, Missouri).

**Scope of MROs.** MROs are limited to the conduct of "medical research," or "the conduct of investigations, experiments, and studies to discover, develop, or verify knowledge relating to the causes, diagnosis, treatment, prevention, or control of physical or mental diseases and impairments of man. …." (See 26 CFR § 1.170A-9(d)(2)(iii)).

While this definition encompasses a broad range of the life sciences, there remains an equally important range of "excluded" life sciences. These abandoned life sciences concern the health and productivity of crops, animals and aquaculture, which corresponds to the availability, safety and security of the raw materials of our food, feed and fiber. Agriculture and its relationship to the establishment and maintenance of the human race are consistent with the public policy and purposes underlying the creation of MROs.

The treatment and elimination of human diseases and impairments have historically and continues today to dominate the life sciences, as human afflictions impart a sense of urgency and emotion that are not commonly shared with crops and animals. Moreover, the modernization of agriculture in the mid- to late 1960s—the so-called "Green Revolution"—remained more than a decade away when Congress created MROs.

Notwithstanding, the federal government has played a key role in agriculture and the funding of its research throughout the history of the United States.

**If you eat food or wear natural fibers, you have an interest in agriculture.** A recent report provides a comprehensive overview of the state of domestic agriculture, the three-decade trend of declining federal support and the future of the United States' leadership position:

> Since its earliest colonial history, agriculture has played a central role in the social and economic activity of the United States. Since that time, the Nation has depended on agriculture not only to feed its citizens, but also as a major driver of its economy. Exports of agricultural products produced a $34 billion trade surplus in 2010 and a $37 billion trade surplus in 2011,[1] and the agricultural sector is currently responsible for 1 in 12 American jobs.[2] Beyond its economic impact, U.S. agriculture provides a foundation for world food stability and security, supplying most of the food aid to developing nations around the world. Looking to the future, U.S. agriculture must continue to be the backbone for the emerging U.S. bioeconomy, helping the Nation meet its need for sustainable sources of energy and materials, and simultaneously contributing to the prosperity of rural communities. A vibrant U.S. agriculture enterprise is paramount to the future well-being of the Nation.[3]
>
> U.S. prominence across many different areas of agriculture derives in part from a rich history of commitment to agricultural research. Our current agricultural research system dates to 1862, when President Lincoln signed into law two pieces of legislation creating the USDA and the network of Morrill Land Grant Colleges.

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[1] Citing Economic Research Service, US Department of Agriculture. (2012). "Value of U.S. trade—agricultural, nonagricultural, and total—and trade balance, by calendar year." Accessed May 18, 2012 at http://www.ers.usda.gov/data-products/foreign-agricultural-trade-of-the-united-states-(fatus).aspx.

[2] Citing Public comments from USDA Secretary Tom Vilsack before PCAST, March 9, 2012. Accessed August 24, 2012 at www.tvworldwide.com/events/pcast/120309/globe_show/default_go_archive.cfm?gsid=1977&type=flv&test=0&live=0.

[3] Citing National Research Council. (2009). *A New Biology for the 21st Century*. Accessed June 19, 2012 at www.ncbi.nlm.nih.gov/books/NBK32509.

Agricultural research has helped to make the U.S. farmer among the most efficient in the world. Today, the United States stands as the global leader in meeting the world's demand for food, thanks to significant productivity gains achieved since the middle of the 20th century. The American agricultural enterprise has consistently boosted productivity over the past few decades for most major crops and livestock, and it has been a hallmark of industrial innovation.

…

Public financial support for agricultural research has waned over the past three decades (relative to the increases of the 1960s and 1970s) as other areas of science and technology research and development (R&D) have seen substantial growth. Public funding of agricultural research, in real dollars, has remained at nearly the same level for the last 30 years.[4] (Note that other Federal agencies, particularly the National Science Foundation (NSF) and the Department of Energy (DOE), have provided additional support for basic research underpinning the explicitly agricultural mission of USDA). Excluding recent research on biofuels production, less than $500 million per year is available for competitive grants in agriculture, roughly 2 percent of the amount of competitive funding from the National Institutes of Health and 6 percent from the NSF …[5, 6]

Although the United States is the undisputed world leader in agricultural production today, continued innovation and investment are essential to maintaining a competitive advantage in the future. The private sector's commitment to agricultural research in the United States remains strong. However, many of the most important companies for agricultural research are large international corporations; many of them are investing and even outsourcing significant research dollars overseas, as China, India, and Brazil start to make large public investments in agricultural research.[7] The waning public investment in agricultural research in the United States contributes significantly to the risk of losing its international leadership in agriculture.

As we look across the 21st century, we see that agriculture faces a series of new challenges that will require a renewed commitment to innovation and advanced technology development. Private industry will play an important role in the research required to meet these challenges, just as it does today in areas directly related to product development. But much of the necessary research is unlikely to result in new products in a time horizon short enough to incent the private sector to

[4] Citing Egli, D.B. (2008). "Comparison of Corn and Soybean Yields in the United States: Historical Trends and Future Prospects." *Agronomy Journal*, "Celebrate the Centennial" supplement, S79-88.
[5] Citing NSF NCSES. Data from Federal Funds for Research and Development: Fiscal Years 2008-10. Accessed August 24, 2012 at www.nsf.gov/statistics/nsf12308/content.cfm?pub_id=4121&id=2.
[6] Citing Pretty, J. (2008). "Agricultural sustainability: concepts, principles and evidence." *Philosophical Transactions of the Royal Society* B 363:447-465.
[7] Citing USDA ERS. (2011). Global Public Agricultural Research Spending. Graph derived from OECD, Eurostat and ASTI. The graph indicates that China, India and Brazil have made steady and continuous investments in agriculture research over the last decade in particular.

> shoulder the entire research burden. Moreover, many of these challenges are clearly in the public domain, as they focus on critical public goods, such as long-term water security; integrated pest-management strategies; or the development of new varieties of livestock, cereal, vegetable, and cover crops that commercial enterprises may not have an interest in. In many cases, important benefits of agricultural research cannot be monetized, making them an unlikely focus for the private sector.[8]

Acknowledging the challenges that lay before agriculture and emphasizing a few of the above findings, the report further provided:

> The United States is the undisputed world leader in agricultural production today, but as we look out across the 21st century, agriculture faces a series of challenges:
>
> - Managing new pests, pathogens and invasive plants.
> - Increasing the efficiency of water use.
> - Reducing the environmental footprint of agriculture.
> - Growing food in a changing climate.
> - Managing the production of bioenergy.
> - Producing safe and nutritious food.
> - Assisting with global food security and maintaining abundant yields.
>
> Meeting these challenges requires a renewed commitment to research, innovation and technology development in agriculture. Private industry will continue to play an important role meeting these challenges in areas directly related to commercial developments and commodities. But many of the developments necessary to meet these challenges are public goods and not easily monetized. These challenges require a strong public commitment to agricultural research, one that fosters a culture of innovation and excellence to address some of the greatest threats to U.S. long-term prosperity and security.[9]

It is widely recognized that the growing gap between federal funding levels and the research expenditures necessary to meet these challenges will not be made up through appropriations to federal agencies. The opportunity and need to leverage private wealth for the benefit of public agricultural research could not be more relevant during this tax reform discussion.

**A legislative proposal.** Exhibit A includes draft language modifying the Code to create *agricultural research organizations* in accordance with the MRO model.

Consistent with the positive requirements imposed on MROs, the requirements for each *agricultural research organization* includes: (1) the continuous conduct of agricultural research;

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[8] President's Council of Advisors on Science and Technology. (2012). Report to the President on Agricultural Preparedness and the Agriculture Research Enterprise. 3-5. Accessed February 24, 2013 at http://www.whitehouse.gov/sites/default/files/microsites/ostp/pcast_agriculture_20121207.pdf.

[9] *Id.* at v.

(2) a minimum expenditure requirement (consistent with MROs); and (3) work in conjunction with a land-grant college or university or a non-land-grant college of agriculture. This last requirement leverages the long-standing role such universities have played in domestic agricultural research with additional benefits deriving from their location in all 50 states, infrastructure, research, mechanisms for delivering information and the education of tomorrow's workforce. The terms "agricultural research," "land-grant college or university" and "non-land-grant college of agriculture" are all defined terms in Section 1404 of the Agricultural Research, Extension, and Teaching Policy Act of 1977, as incorporated by reference.

If created, *agricultural research organizations* would be subject to existing (and future) IRS rules and procedures affecting all 501(c)(3) organizations for establishing and maintaining an organization's exemption, reporting and operating and would be subject to IRS enforcement provisions and sanctions for any improper activities. *Agricultural research organizations*, as proposed, would merely stand on an equal-footing with other public charities, and public agricultural research would be afforded the same opportunities for claiming private wealth for the public good as its human medical research counterpart.

In the 112th Congress, this legislative proposal received bipartisan, bicameral support. Today, in an effort to help achieve bipartisan tax reform, sponsors of the legislation are temporarily withholding introduction of stand-alone legislation in the 113th Congress.

**Cost of the legislative proposal.** In March 2012, the Joint Committee on Taxation issued a revenue estimate for the Charitable Agricultural Research Act (the "Act") (Exhibit A), which is set forth in Exhibit B.

The Joint Committee on Taxation estimated that the Act would reduce federal fiscal budget receipts by $29 million over 10 years. This cost is solely attributable to the loss of Section 4940 excise tax (paid only by private foundation exempt organizations) resulting from potential conversions of private foundations to *agricultural research organizations*. Two factors could materially reduce this estimate:

- The number of private foundation-conversions are fewer than projected (e.g., if no private foundations converted, then there would be no material cost to the federal government for enactment of this legislation); and
- Simplification or elimination of the Section 4940 excise tax applicable to private foundations.

The incentives for donors to contribute to the proposed *agricultural research organizations* are no greater than for contributions to other public charities. Accordingly, the proposed *agricultural research organizations* do not reduce the base of potential taxpayers.

**Impact.** More than 30 independent studies published from 1965-2005 indicate that for every $1 spent on agricultural research, at least $10 worth of benefits are returned to the U.S. economy.[10] Through the creation of *agricultural research organizations*, this public research sector would

[10] Fuglie, K.O., and P. W. Heisey. 2007. "Economic Returns to Public Agricultural Research." United States Department of Agriculture Economic Research Service. Economic Brief Number 10.

have access to a new source of private support that has never been considered or relied upon to further scale these benefits.

It should be noted that even a small number of adequately funded *agricultural research organizations* will dramatically impact the public agricultural sector. As noted above, today less than $500 million annually is currently available in competitive agriculture research funding in the United States. Assuming only ten *agricultural research organizations* are formed using private wealth (and assuming an average of $25 million in annual research expenditures for each institution), public agricultural research sector expenditures would see an overall increase of 50% (based on 2012 dollars). In addition to research outcomes, new innovations and technologies, these expenditures would result in new job creation, the flow of new funding opportunities for those universities working "in conjunction with" these *agricultural research organizations* and directly benefit rural America, whether based on the location of such research institutions and/or product of their work.

Ten new institutions formed over several decades is a conservative projection; however, this number serves as an illustration of the potential power this tool offers to revolutionize public agricultural research.

Voicing support for the Charitable Agricultural Research Act in the 112th Congress, Exhibit C includes a list of more than 60 universities, agricultural groups and other interested parties that indicated and continue to indicate their support for this innovative approach, the additive, non-public funding opportunities it offers and the measurable impact it will have.

**Conclusion.** In the February 14, 2013, *Tax Reform and Charitable Contributions* hearing of the U.S. House Committee on Ways and Means, a panelist made the following statement:

> [T]he charitable deduction should not be viewed as a cost to the government. Philanthropy eases the burdens of government, and reduces taxpayers' costs, by meeting needs that otherwise would have to be met by government, and by pioneering more cost-effective and efficient ways to meet those needs. Charitable giving in this country often forms our final safety net, and we cannot afford to put at risk the people who rely on it[11].

There are few issues that concern the federal government more than human health and food, feed and fiber production and security. Despite a long history of financial support and investment, the federal government cannot meet the growing needs of agricultural-related research in this country.

The United States further cannot afford to scale its research endeavors to simply match the diminishing resources offered by the federal government if it hopes to maintain its leadership position in this sector.

While private industry will continue to invest in agriculture, those investments will continue to focus on a small number of crops that yield the highest profitability. Notwithstanding, a whole-

[11] *Tax Reform and Charitable Contributions: Hearing before the House Ways and Means Committee*, 113th Cong. 3 (2013)(statement of Kevin K. Murphy, President, Berks County Community Foundation and Chairman of the Board, Council on Foundations).

system approach is required. Non-traditional agricultural research funding approaches must be explored and implemented.

Through philanthropy and use of the charitable deduction, new private-public partnerships are possible to benefit public agricultural research. Tools already exist for public medical research through *medical research organizations.* MROs are successful. They contribute fundamental, translational and applied discoveries for the betterment of society. Through comprehensive tax reform, we urge this Committee and this Congress to resolve an inequity within the Code and assist in building the public agricultural research capacity in the United States by creating *agricultural research organizations*.

## EXHIBIT A

## CHARITABLE AGRICULTURAL RESEARCH ACT

To amend the Internal Revenue Code of 1986 to provide for the deductibility of charitable contributions to agricultural research organizations, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Charitable Agricultural Research Act”.

**SECTION 2. DEDUCTIBILITY OF CHARITABLE CONTRIBUTIONS TO AGRICULTURAL RESEARCH ORGANIZATIONS.**

(a) IN GENERAL.—Subparagraph (A) of section 170(b)(1) of the Internal Revenue Code of 1986 is amended by striking “or” at the end of the clause (vii), by striking the comma at the end of clause (viii) and inserting “, or”, and by inserting after clause (viii) the following new clause:

> “(ix) an agricultural research organization directly engaged in the continuous active conduct of agricultural research (as defined in section 1404 of the Agricultural Research, Extension, and Teaching Policy Act of 1977) in conjunction with a land-grant college or university (as defined in such section) or a non-land-grant college of agriculture (as defined in such section), and during the calendar year in which the contribution is made such organization is committed to spend such contribution for such research before January 1 of the fifth calendar year which beings after the date such contribution is made,”.

(b) EXPENDITURES TO INFLUENCE LEGISLATION.—Paragraph (4) of section 501(h) of the Internal Revenue Code of 1986 is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (D) the following new subparagraphs:

> “(E) section 170(b)(1)(A)(ix) (relating to agricultural research organizations),”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made on and after the date of the enactment of this Act.

## EXHIBIT B

## JOINT COMMITTEE ON TAXATION
## REVENUE ESTIMATE FOR THE CHARITABLE AGRICULTURAL RESEARCH ACT



Congress of the United States
JOINT COMMITTEE ON TAXATION
1625 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6453
(202) 225–3621
http://www.jct.gov



Honorable Devin Nunes
U.S. House of Representatives
1013 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Nunes:

This letter is in response to your request for a revenue estimate of H.R. 2959, the "Charitable Agricultural Research Act."

Under present law, an individual may claim an itemized deduction for contributions to charitable organizations limited to a specified percentage of the individual's contribution base. The contribution base is the taxpayer's adjusted gross income ("AGI") for a taxable year, disregarding any net operating loss carryback to such year under section 172 of the Internal Revenue Code (the "Code"). Contributions by an individual taxpayer of cash and other property (other than appreciated capital gain property) to a charitable organization described in section 170(b)(1)(A) of the Code (public charities, private foundations other than nonoperating private foundations, and certain government units) may not exceed 50 percent of the taxpayer's contribution base. Contributions of this type to nonoperating private foundations and certain other organizations generally may be deducted up to 30 percent of the taxpayer's contribution base.

Under your proposal, section 170(b)(1)(A) would also include certain agricultural research organizations ("ARO"). An ARO is an organization directly engaged in the continuous active conduct of agricultural research (as defined in section 1404 of the Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103)) in conjunction with a land-grant college or university or a non-land-grant college of agriculture. To qualify for the 50-percent contribution limitation, the ARO must commit to spend any contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made.

In general, a section 501(c)(3) organization is treated as a private foundation unless it is described in section 509(a) of the Code. Organizations that are described in section 509(a)(1), (2), (3) or (4) qualify as public charities, which generally are afforded more favorable treatment than private foundations. Under section 509(a)(1), organizations described in section 170(b)(1)(A) (other than clauses (vii) and (viii)) qualify as public charities without regard to the organizations' sources of financial support. By amending section 170(b)(1)(A) to include AROs, your proposal treats AROs as public charities, not private foundations; as a result, AROs are exempt from section 4940 excise tax on the net investment income of private foundations. Your proposal also amends section 501(h)(4) to permit an ARO to use the section 501(h) expenditure

test to determine its permissible level of lobbying activity, but we estimate that this change has a negligible revenue effect.

Your proposal is effective for contributions made on or after the date of enactment. We assume that AROs that are private foundations under present law would qualify as public charities and thus would no longer owe section 4940 excise tax in taxable years beginning after the date of enactment.[1] Assuming an enactment date of April 1, 2012, we estimate that your proposal would have the following effect on Federal fiscal year budget receipts:

| Fiscal Years [Millions of Dollars] | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2012-17 | 2012-22 |
| [1] | -2 | -2 | -3 | -3 | -3 | -3 | -3 | -3 | -3 | -4 | -12 | -29 |

**NOTE:** Details do not add to totals due to rounding.
[1] Loss of less than $500,000.

I hope this information is helpful to you. If we can be of further assistance in this matter, please let me know.

Sincerely,

Thomas A. Barthold

Thomas A. Barthold

[1] See sec. 507(b); Treas. Reg. sec. 1.507-2T(c).

## EXHIBIT C

## CHARITABLE AGRICULTURAL RESEARCH ACT SUPPORT

Alliance of Western Milk Producers
American Farm Bureau Federation
American Farmers & Ranchers
American Sheep Industry Association
American Society of Agronomy
American Society for Horticulture Science
American Soybean Association
American Veterinary Medical Association
Association of Public and Land-grant Universities
Biotechnology Industry Organization
California Apple Commission
California Association of Wheat Growers
California Blueberry Commission
California Cattlemen's Association
California Citrus Mutual
California Cotton Ginners and Growers Association
California Dairies, Inc.
California Farm Bureau Federation
California Grape and Tree Fruit League
California League of Food Processors
California Olive Association
California Polytechnic State University, San Luis Obispo
California Poultry Federation
California Rice Commission
California State University, Fresno
California Women for Agriculture
California Wool Growers Association
Clemson University
CropLife America
Crop Science Society of America
Iowa State University
Michigan State University
National Association of Wheat Growers
National Cattlemen's Beef Association
National Chicken Council
National Coalition for Food and Agricultural Research
National Corn Growers Association
National Cotton Council
National Council of Farmers Cooperatives
National Farmers Union
National Grain and Feed Association
National Greenhouse Manufacturers Association
National Milk Producers Federation
National Turkey Federation
North Dakota State University
Oklahoma Farm Bureau Federation
Oklahoma State University
Olive Growers Council of California
Oregon State University
Poultry Science Association
Soil Science Society of America
Texas A&M University
Texas Farm Bureau Federation
The Ohio State University
Tulare County Farm Bureau Federation
United Egg Producers
United Fresh Fruit and Vegetable Association
University of Arizona
University of California System
University of Maryland
University of Minnesota
U.S. Apple Association
U.S. Cattlemen Association
USA Rice Federation
Washington State University
Western Growers Association
Western United Dairymen